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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/556,481	11/14/2005	Christopher Malyszewicz	76241.010500	1232				
<div>Richard E Kurtz II Greenberg Traurig Suite 1200 1750 Tysons Boulevard McLean, VA 22102</div>								
<div>759004/04/2008</div>								
<div>EXAMINER</div>								
<div>HARDELL, JOHN R</div>								
<table border="1"><thead><tr><th>ART UNIT</th><th>PAPER NUMBER</th></tr></thead><tbody><tr><td colspan="2">1796</td></tr></tbody></table>					ART UNIT	PAPER NUMBER	1796	
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<table border="1"><thead><tr><th>MAIL DATE</th><th>DELIVERY MODE</th></tr></thead><tbody><tr><td>04/04/2008</td><td>PAPER</td></tr></tbody></table>					MAIL DATE	DELIVERY MODE	04/04/2008	PAPER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/556,481

**Applicant(s)**

MALYSZEWICZ, CHRISTOPHER

**Examiner**

John R. Hardee

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 35, 36, 38-64, 66 and 68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35, 36, 38-64, 66 and 68 is/are rejected.
- 7) ☒ Claim(s) 55 (1<sup>st</sup>) is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 55 (first instance) objected to because of the following informalities: This claim should be numbered as claim 54. Appropriate correction is required.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 35, 36, 38-54 and 59-62 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 45 of copending Application No. 11/054,474. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '474 application recites a composition comprising at least one alcohol, at least one long-chain alkyl

polyamine and at least one halogen. Determination of the results effective amounts of these constituents would be an obvious expedient, as would the choice of particular alcohols. It would have been obvious at the time that the invention was made to make compositions as presently claimed, because the '474 recites compositions with a species-genus relationship to those presently recited. Use of animal or vegetable feedstocks comprising a mixture of chain lengths is notoriously common in the surfactant field. Recitation of intended use does not define one claim set over the other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 35, 36, 38-64, 66 and 68 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-40 of copending Application No. 11/569,287. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '287 recites the same compositions as presently recited, except that they are recited in the '287 as being skin cleansing and disinfecting compositions. Accordingly, the claims of the '287 anticipate the present claims. Use of animal or vegetable feedstocks comprising a mixture of chain lengths is notoriously common in the surfactant field. Recitation of intended use does not define one claim set over the other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "w-propanol" should be "i-propanol" or "n-propanol".

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 35, 36, 38-64, 66 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggensperger et al., US 5,276,047 in view of Ofusu-Asante et al., US 6,387,856. . The Eggensperger reference discloses the use of alkylated polyamines as shown in the abstract for inclusion in surfactants, detergents and cleansing and polishing agents. R is a straight or branched alkyl or alkylene radical of 10-14 carbons, n and m are non-zero, and  $n+m = 4-12$ . Use of animal or vegetable feedstocks comprising a mixture of chain lengths is notoriously common in the surfactant field. The person of ordinary skill in the surfactant art would fairly infer that R could be a mixture of chain lengths of 10-14 carbons. Suitable solvents include low molecular weight univalent (monoprotic) alcohols (col. 2, lines 6+), making the use of mixtures of such alcohols obvious. Determination of the solvent-effective amount of disclosed solvents amounts to ordinary experimentation, as does determination of the cleaning-effective

amount of the disclosed cleaner. The solvents act as wetting agents, and the amine has surfactant properties. Addition of a halogen is not disclosed.

Ofusu-Asante teaches that antimicrobial compositions for manual dishwashing may comprise 0.001-2% of iodine atoms complexed with amphoteric surfactant (abstract). The compositions are disclosed as stable at a pH of 7-10, implying the use of a buffer to stabilize pH. It would have been obvious at the time that the invention was made to incorporate the iodine-amphoteric complex of Ofusu-Asante into the hard surface cleaning compositions of Eggensperger, because Eggensperger discloses at col. 3, lines 5-6 that other disinfectants may be added to the compositions disclosed therein, and Ofusu-Asante teaches iodine-amphoteric complexes for use in hard surface cleaning compositions such as manual dishwashing detergents. Regarding claim 49, amphoteric surfactants are commonly obtained as a mixture of chain lengths. Language drawn to anti-viral, anti-fungal, etc. compositions, as well as binding of DNA and encapsulation recite inherent properties and intended use and are afforded little patentable weight.

### ***Response to Arguments***

9. Applicant's arguments filed February 27, 2008 have been fully considered but they are not persuasive. Regarding the ODP rejection over the '474 application, applicant has since amended the '474 claims to recite mixtures of chain lengths as presently recited. Such mixtures are notoriously common in the surfactant art, so use of mixtures of chain lengths would be obvious anyway. Regarding the ODP rejection over

the '287 application, applicant argues that the recitation of an intended use defines one claim set over the other. It is well established that such recitation does not distinguish one set of product claims over another.

Regarding the 103 rejection, applicant argues that neither of the references discloses all of the features of the invention. This was acknowledged in the 103 rejection, and it is why the references were combined.

Applicant argues that Ofusu-Asante does not indicate that additional components are needed. This is not persuasive because motivation to add other ingredients comes from the other reference.

Applicant argues that the documents are in different technical areas. This is not persuasive because Eggensperger discloses the use of alkylated polyamines for use in hard surface cleaners, and that other disinfectants may be added to the compositions disclosed therein. Ofusu-Asante teaches iodine-amphoteric complexes for use in hard surface cleaners.

Applicant argues that the references have different international classifications. This is not persuasive because classification is determined by what is claimed. The teachings of a reference are not confined to what is claimed.

10. This action contains grounds of rejection which were not motivated by applicant's amendments. Accordingly, it is NOT FINAL.

11. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Harold Pyon, may be reached at (571) 272-1498.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John R. Hardee/  
Primary Examiner  
April 1, 2008